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INSANITY AND CRIMINAL RESPONSIBILITY.

REPORT OF COMMITTEE "B" OF THE INSTITUTE.¹

EDWIN R. KEEDY, Chairman.

The Institute at its last meeting unanimously approved the following bill for the regulation of expert testimony, which was presented by the Committee on Insanity and Criminal Responsibility:

Section 1. *Summoning of Witnesses by Court.* Where the existence of mental disease or derangement on the part of any person becomes an issue in the trial of a case, the judge of the trial court may summon one or more disinterested qualified experts, not exceeding three, to testify at the trial. In case the judge shall issue the summons before the trial is begun, he shall notify counsel for both parties of the witnesses so summoned. Upon the trial of the case, the witnesses summoned by the court may be cross-examined by counsel for both parties in the case. Such summoning of witnesses by the court shall not preclude either party from using other expert witnesses at the trial.

Section 2. *Examination of Accused by State's Witnesses.* In criminal cases, no testimony regarding the mental condition of the accused shall be received from witnesses summoned by the accused until the expert witnesses summoned by the prosecution have been given an opportunity to examine the accused.

Section 3. *Commitment to Hospital for Observation.* Whenever in the trial of a criminal case the existence of mental disease on the part of the accused, either at the time of the trial or at the time of the commission of the alleged wrongful act, becomes an issue in the case, the judge of the court before which the accused is to be tried or is being tried shall commit the accused to the State Hospital for the Insane, to be detained there for purposes of observation until further order of court. The court shall direct the superintendent of the hospital to permit all the expert witnesses summoned in the case to

¹The membership of the committee is as follows: Prof. Edwin R. Keedy, Chairman, University of Pennsylvania, Philadelphia; Hon. Orrin N. Carter, Justice of the Supreme Court of Illinois, 1022 Court House, Chicago; Dr. Adolph Meyer, Johns Hopkins University, Baltimore; Dr. William E. Mikell, University of Pennsylvania, Philadelphia; Dr. Harold Moyer, 103 State St., Chicago; Dr. Morton Prince, 458 Beacon St., Boston, Mass.; Dr. William A. White, Supt. Gov't Hospital for Insane, Washington, D. C.

have free access to the accused for purposes of observation. The court may also direct the chief physician of the hospital to prepare a report regarding the mental condition of the accused. This report may be introduced in evidence at the trial under the oath of said chief physician, who may be cross-examined regarding the report by counsel for both sides.

Section 4. *Written Report by Witness.* Each expert witness may prepare a written report upon the mental condition of the person in question, and such report may be read by the witness at the trial. If the witness presenting the report was called by one of the opposing parties, he may be cross-examined regarding his report by counsel for the other party. If the witness was summoned by the court, he may be cross-examined regarding his report by counsel for both parties.

Section 5. *Consultation of Witnesses.* Where expert witnesses have examined the person whose mental condition is an element in the case, they may consult with or without the direction of the court, and if possible, prepare a joint report to be introduced at the trial.

The activities of this committee were directed during the past year to securing the approval of this bill by other professional associations, and to attempting to secure its enactment by various legislative bodies. In February, of the present year, the Conference on Medical Legislation of the American Medical Association unanimously approved the bill and urged its enactment. The special committee of the Commissioners on Uniform State Laws appointed to co-operate with this Institute has recommended favorable action by the commissioners at their conference this year.

The Committee on Jurisprudence and Law Reform of the American Bar Association approved of sections 1, 2, 4 and 5, of the bill, and recommended that the following provision be substituted for section 3:

Whenever in the trial of a criminal case the accused pleads insanity as a defense, he shall be required to state in his pleading whether he claims that the malady is continuous and permanent, or whether it is a temporary attack which has passed off at the time of the pleading. If the defense relied on is a continuing and permanent malady, and if the existence of this malady becomes an issue in the case, the judge of the court before which the accused is to be tried or is being tried shall commit the accused to the State Hospital for the Insane, or other appropriate hospital, to be detained there until further order of court.

The Bar Association Committee objects to section 3 of the bill

on the ground that it savors of the "third degree," and indirectly violates the constitutional safeguards against self-incrimination. In answer to this it may be said that similar statutes exist in Maine, Massachusetts, New Hampshire, Vermont and Virginia, and their enforcement seems free from official abuse. The section proposed by the Bar Association committee requires a special plea of insanity. This is contrary to the practice in the great majority of the states, which permits evidence of insanity to be introduced under the plea of not guilty. It may be seriously questioned whether a provision for such a radical change in pleading, however desirable such a change may be, should be contained in a bill whose scope is the regulation of expert testimony. A further objection to the proposal of the Bar Association Committee is that, though it provides for commitment to a hospital and detention there until further order of the court, it does not specify the purpose of such commitment and detention. Unless these are for the purpose of securing evidence regarding the mental condition of the defendant, provisions for them would seem to have no place in this bill.

The bill as approved by the Institute was introduced in the Senate of the United States by Mr. McCumber, on May 22nd, and after being read twice was referred to the Committee on Judiciary. The bill was also introduced in the Illinois House of Representatives at its last session, and was referred to the Committee on Judicial Procedure and Practice. This committee recommended the passage of the first section, but disapproved of the other sections. Owing to the strenuous opposition of certain lawyers who were members of the House, the bill did not reach second reading.

Your committee asks that it may be continued for the purpose of completing its work of determining the proper relation between mental disease and criminal responsibility; and for the purpose of urging the enactment of the expert testimony bill.